

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014030365

ORDER DENYING MOTION TO
AMEND COMPLAINT AND
DEEMING DISTRICT'S MOTION TO
DISMISS SECOND AMENDED
COMPLAINT MOOT

Parent on Student's behalf filed a request for due process hearing (complaint) on March 10, 2014 naming Sacramento City Unified School District (District). On March 18, 2014, the Office of Administrative Hearings (OAH) granted District's notice of insufficiency (NOI) and gave Student 14 days leave to amend the complaint. On March 29, 2014, Parent timely filed an amended complaint (first amended complaint). On April 1, 2014, District timely filed an NOI to the first amended complaint, which OAH denied on April 2, 2014. On April 19, 2014, Student filed an amendment to the first amended complaint (second amended complaint), which was intended to supplement rather than replace Student's first amended complaint. OAH will deem the filing of the second amended complaint to be a request to amend and supplement the first amended complaint. District filed a motion to dismiss the second amended complaint, which in effect was an opposition to Student's request to amend.

For the reasons discussed below, Student's request to amend and supplement the complaint is denied, and District's motion to dismiss is deemed moot.

APPLICABLE LAW

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their

¹ All statutory citations are to Title 20 United States Code unless otherwise indicated.

parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims of seeking relief for emotional distress, administrative misconduct requiring enforcement by the California Department of Education, or claims of discrimination that may arise under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504), Section 1983 of Title 42 United States Code (Section 1983), No Child Left Behind, and related state and federal statutes and regulations. Although OAH will not generally grant a motion to dismiss a case that falls within its jurisdiction, OAH may dismiss those claims that are not within OAH jurisdiction.

ANALYSIS

The hearing in this matter is set for May 5, 2014, and therefore Student’s request to amend and supplement the first amended complaint is timely.

However, by way of history in this case, Student’s first amended complaint included numerous allegations relating to bullying of Student and Parent as well as administrative conduct by District personnel that did not raise claims relating to a proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to Student. In its April 2, 2014 Order denying District’s NOI, OAH noted that those allegations did not raise issues falling within OAH jurisdiction, and therefore they were not issues that would move forward to hearing.

Similarly, Student asserts in her second amended complaint that school personnel engaged in administrative misconduct, including falsifying documents. Student also claims that, as a result of the alleged administrative misconduct, she and her parent suffered emotional distress. She seeks disciplinary orders from OAH and monetary damages.

Neither the claims or the relief sought in the second amended complaint are within OAH jurisdiction because they do not assert claims relating to a proposed initiation or change concerning the identification, evaluation or educational placement of, or the provision of a free appropriate education to, Student. Student’s request to amend and supplement the first amended complaint is denied, and therefore District’s motion to dismiss the second amended complaint is moot.

ORDER

1. Student's request to amend and supplement the first amended complaint is denied. The operative complaint for hearing shall be the first amended complaint as limited by OAH's April 2, 2014 Order denying District's NOI and clarifying the issue for hearing.
2. District's motion to dismiss the second amended complaint is deemed moot.
3. All hearing dates are confirmed.

DATE: April 24, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings